THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.10532 OF 2007

Dated: 21.06.2007

Between:

Boyanakkala Naga Raju

…Petitioner

And:

The Principal Secretary to Government,
General Administration Department, Govt.,
of A.P., Hyderabad and another.

…Respondents

THE HONOURABLE SRI JUSTICE D.S.R.VARMA
AND
THE HONOURABLE SRI JUSTICE D.APPA RAO

WRIT PETITION No.10532 of 2007

ORAL ORDER: *(per Hon'ble Sri Justice D.S.R.Varma)*

Heard both sides.

2. This writ petition is filed challenging the order of detention passed by the second respondent-The Collector and District Magistrate, Kurnool vide Rc.No.C1/385/M/2007, dated 31.03.2007, under Section 3 (1) & (2) read with Section 2(a) & (b) of the Andhra

Pradesh Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'Act 1 of 1986') on the grounds that *firstly,* the same is stale and there is no nexus nor proximity with the crimes in which the petitioner-detenu was allegedly involved; *secondly,* the offences in which the petitioner-detenu was alleged to be involved are bailable offences, in which he was released on bail; *thirdly,* there are no allegations in the crimes that the petitioner-detenu was engaged in the manufacturing of liquor and selling the same, as such, he cannot be treated as a 'boot-legger'; *lastly* that the second respondent while passing the impugned order had violated the provisions of Act 1 of 1986, which vitiates the rights guaranteed to the petitioner-detenu under Article 21 of the Constitution of India.

3. In the counter-affidavit filed by respondent No.2-The Collector and District Magistrate, Kurnool, who is the competent authority to pass the impugned order, it is stated that the petitioner-detenu has been indulging in the offences of possession, transportation and sale of diluted arrack sachets in and around Peddakaduthur Mandal and Mantraalayam Mandal and as the said activities of the petitioner-detenu were prejudicial to the public order and tranquility and were causing damage to the public health, in order to prevent him from further indulging in such activities, the present impugned order came to be passed exercising the powers conferred upon him under the provisions of the Act 1 of 1986.

4. It is further stated that the petitioner-detenu was already involved in Crime Nos.96/2006-07 and 379/2006-07 dated 06.09.2006 and 09.03.2007, respectively. It was alleged that some contraband was seized under a cover

of panchanama from the petitioner-detenu, he was arrested, sent to judicial custody on 09.03.2007 and was lodged at Sub-jail, Adoni, in connection with the said offences. It is further stated that pursuant to the passing of the impugned order, the petitioner-detenu was shifted from Sub-jail, Adoni, to Central Prison, Cherlopally, Ranga Reddy District, on 04.04.2007 and as such, he is under detention.

5. Be that as it may, it has been brought to the notice of this Court by learned counsel appearing for both the parties that the factum of judicial custody of the detenu was not brought to the notice of the competent authority i.e., the second respondent, while passing the impugned order, and that there is no reference or mention of the judicial custody of the detenu at the time of passing the impugned order and further that the second respondent, who is the competent authority, did not assign any special reasons and put the same on record in order to pass the orders under Section 3 (1) & (2) read with Section 2 (a) & (b) of Act 1 of 1986.

6. We have perused the impugned order and found that though the competent authority had assigned reasons for passing the impugned order, under the Act 1 of 1986, detaining the petitioner, there was no specific mention about the petitioner-detenu being in judicial custody in connection with Crime Nos.96/2006-07 and 376/2006-07.

7. From the submissions made by learned counsel appearing for both parties and on a perusal of the impugned order, it is absolutely clear that though there is a mention that the detenu was in judicial custody at Sub-jail, Adoni, prior to the passing of the impugned order and

was shifted to Central prison, Cherlopally, the said fact of the petitioner-detenu being in judicial custody was not brought to the notice of the second respondent, who is the competent authority. Had it been so, the second respondent, in all probability, would and could have assigned special reasons for passing the impugned order.

8. It is obvious that the competent authority is not prevented from passing an order like the present impugned order, but since he had no knowledge about the previous status of the petitioner-detenu as a detenu in the judicial custody, he could not assign any special reasons for passing the impugned order under Section 3 (1) & (2) read with Section 2(a) & (b) of the Act 1 of 1986. In other words, the competent authority is not prohibited from invoking his jurisdiction merely because the petitioner-detenu was already in judicial custody. But, it is imperative for the competent authority to take note of the fact that the petitioner-detenu was in judicial custody prior to passing of the impugned order under the aforesaid Sections of Act 1 of 1986 and give special reasons therefor.

9. We are fortified by the judgments of the apex Court in ***ABDUL SATHAR IBRAHIM VS. UNION OF INDIA***[1], wherein, at paragraph No.11, Their Lordships held as under: -

> **"As already noted, in all such cases where the detenu was in custody at the time of passing an order of detention what is strictly required is whether the detaining authority was aware of the fact that the detenu was in custody and if so was there any material to show that there were compelling reasons to order detention in spite of his being in custody. These aspects assume importance because of the fact that a person who is already in custody is disabled from indulging**

in any prejudicial activities and as such the detention order may not normally be necessary. Therefore, the law requires that these two tests have to be satisfied, in the case of such detention of a person in custody."

10. In the present case, as already noticed, the competent authority was not aware of the fact nor was he informed about the factum of the judicial custody of the petitioner-detenu.

11. In view of the aforesaid judgment of the apex Court, we are of the view that the impugned order cannot be sustained and is liable to be set aside.

12. In the result, the writ petition is allowed and the impugned order, dated 31.03.2007, passed by the second respondent-the District Collector and District Magistrate, Kurnool District, Kurnool, vide Rc.No.C1/385/M/2007 is set aside.

13. The detenu by name Boyanakkala Naga Raju shall be released forthwith, if he is not required in any other case/crime. There shall be no order as to costs.

D.S.R.VARMA, J

D.APPA RAO, J

21.06.2007
dr

[1] AIR 1991 SC 2261